

Commonwealth of
Massachusetts
Department of Labor Relations

FY2016 ANNUAL REPORT



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EXECUTIVE SUMMARY

On November 14, 2007, pursuant to [Chapter 145 of the Acts of 2007](#), the Legislature reorganized the Commonwealth's neutral labor relations agencies into the Division of Labor Relations (DLR). On March 11, 2011, under Chapter 3 of the Acts of 2011, "An Act Reorganizing the Executive Office of Labor and Workforce Development," the DLR's name was changed from the Division of Labor Relations to the Department of Labor Relations.

The DLR protects employees' rights to organize and choose bargaining representation and ensure that employers and unions benefit from, and comply with, the Commonwealth's collective bargaining statutes. To carry out this mission, the DLR conducts elections, hears representation cases, investigates and hears unfair labor practice cases, resolves labor disputes through mediation and arbitration, and issues orders in cases that parties are unable to resolve through alternative dispute resolution methods. The DLR includes 1) hearing officers, arbitrators, mediators and support staff, 2) the Commonwealth Employment Relations Board (CERB), an appellate body responsible for reviewing hearing officer orders and issuing final decisions, and 3) the Joint Labor Management Committee (JLMC), a committee including labor and management representatives, which uses its procedures to encourage municipalities and their police officers and fire fighters to agree directly on terms to resolve their collective bargaining disputes or on a procedure to resolve these disputes.

As reflected in the charts found later in this report, during the past fiscal year, the DLR opened 642 new cases and closed 827 cases. The majority of those cases are unfair labor practice cases. During this past year, the DLR was able to continue improving case-processing time. The average time it takes for a case to move at each stage continued to improve. This improvement is based on the DLR's continued use of new procedures and technology to advance cases and its focus on mediation to settle cases

The inventory of case on the DLR's open docket has remained significantly below historical averages during FY 16. Currently the DLR has approximately 400 open cases at various stages of case processing, including administrative and judicial appeals. Additionally, the DLR has reduced the time it takes from hearing to decision from 33.75 weeks in FY 15 to 14.59 weeks in FY 16. The DLR hopes to maintain this number in the next fiscal year, though this will be dependent on staffing levels. Currently the DLR is working with less staff than it has in recent years.

The DLR continued to use its mediation services to facilitate settlements in all case classifications. In addition to contract mediation, grievance mediation and traditional unfair labor practice mediation, mediators continue to provide expedited mandatory mediation services in all Level I cases. The DLR's continued use of mediation facilitates the parties' relationships and provides significant cost-savings to them. During this past fiscal year, DLR mediators conducted 243 contract mediations, 5 grievance mediations and 158 unfair labor practice mediation sessions. On February 23, 2016, the Acting DLR Director declared impasse in PS-14-3913, Peabody Municipal Light Department and AFSCME, Council 93, AFL-CIO.

During the past fiscal year, the CERB published 15 Hearing Officer Appeal decisions; 8 representation decisions, one decision in the first instance, and decided 24 requests for review of Investigator pre-hearing dismissals.

During the past fiscal year, there were 51 JLMC cases filed. The DLR mediators, working under the JLMC's oversight, conducted 150 contract mediations. The JLMC conducted 11 Section 3(a) hearings.

The DLR offers a myriad of services to accomplish its mission, including those listed below.

- Processing Prohibited Practice Charges
- Representation Petitions and Elections
- Written Majority Authorization Petitions
- Unit Clarification Petitions
- Interest Mediation
- Mediation of Prohibited Practice Charges
- Grievance Mediation
- Grievance Arbitration
- Investigation, Prevention and Termination of Strikes
- Litigation

In FY 2016 the DLR continued using technological advances to provide better service to our stakeholders. In this regard, the DLR implemented its new web based public documents system. This new system gives the public and stakeholders the ability to perform limited searches of the DLR's case management system and retrieve the most frequently request public documents such as charges/petitions, probable cause determinations, briefs and decision. Annual union financial and organizational filings and union certification by employer are also available through the DLR Public Record Search System.

OVERVIEW OF DLR SERVICES

In order to provide prompt and fair resolution of labor disputes, the DLR provides the following services:

1. Prohibited Practice Charges Initial Processing and Investigation

The majority of DLR cases are unfair labor practice cases filed pursuant to G.L. c. 150A or G.L. c. 150E. Charges of prohibited practice may include various allegations, including for example, allegations that an employer discriminated or retaliated against an employee because the employee had engaged in activities protected by law; allegations that an employer or employee organization has failed to bargain in good faith; or allegations that an employee organization has failed to properly represent a member of the bargaining unit.

After an initial review to determine if the case is properly before the DLR and that it meets the DLR filing requirements, the Director will first determine whether the case should be deferred to the parties' own contractual grievance procedure. If the Director determines that the case is properly before the DLR, she will classify the case as a Level I or Level II case based on the case's relative impact to the public. Cases where resolution of the dispute has the greatest urgency will be processed first and the time frame for completion of the investigation will be 14 to 45 days, depending on the level of urgency. Level II cases with less urgency will be investigated between 30 and 90 days from the filing date.

At the investigation, the investigator is statutorily obligated to explore whether settlement of the charge is possible. If such discussions do not result in settlement, the investigator will proceed with the investigation. The investigator will expect the parties to present evidence from individuals with first-hand knowledge during the probable cause investigation. The intent of the probable cause in-person investigation is to have both parties present all the evidence at the investigation, and therefore, most investigations have the record closed at the end of the in-person investigation.

After the record is closed, the investigator will issue the probable cause determination, which is generally a written dismissal or a Complaint of Prohibited Practice. The investigator may also direct the charge to an alternative dispute resolution mechanism (including deferral to the parties' grievance/arbitration procedure). Cases dismissed following an investigation may be appealed to the Commonwealth Employment Relations Board (CERB). If affirmed by the Board, appeals can be made to the Massachusetts Appeals Court.

If the probable cause determination is a Complaint of Prohibited Practice, the case will be scheduled for a hearing on the merits to determine whether the respondent violated the law as alleged in the Complaint. The DLR will once again evaluate and differentiate the cases as Level I or Level II cases. Cases identified as Level I Complaint cases will be scheduled for hearing within three to six months of the Complaint, depending on the level of urgency. In addition, because the DLR mandates mediation in all Level I cases, mediation will take place before the hearing. Cases identified as Level II cases will be scheduled within six months to a year from the Complaint.

2. Hearings and Appeals

After the hearing is scheduled, before a hearing takes place, the DLR requires that the parties file a Joint Pre-Hearing Memorandum and attend a Pre-Hearing Conference in order to clarify the issues for hearing.

The prohibited practice hearing is a formal adjudicatory process. Parties to the proceedings have the right to appear in person, to examine and cross-examine witnesses, to produce evidence and otherwise support or defend the Complaint. Additionally, the sworn testimony is recorded and preserved electronically. At the close of the hearing, the parties often provide the Hearing Officer with post-hearing legal briefs. The Hearing Officer then issues a written decision, determining whether a violation of the Law has occurred. In Level I cases, generally the Hearing Officer issues the decision within three months from when the record is closed. In Level II cases, the decision generally issues within six months from the time the record is closed.

A party who disagrees with the Hearing Officer's decision can appeal to the CERB by filing a Request for Review. In most cases, both sides file briefs with the CERB in support of their respective positions. After review of the record and consideration of the issues, the CERB then issues its decision, following the general impact time frame. Once the CERB issues its decision, the decision is final and can be appealed to the Massachusetts Appeals Court.

The DLR attorneys are authorized by statute to defend the CERB decisions at the Appeals Court.

3. Representation Issues

In all cases that involve representation issues, i.e. representation (or decertification) petitions, written majority authorization petitions, and unit clarification cases, the DLR is statutorily mandated to determine an "appropriate" bargaining unit. To make that determination, the CERB considers community of interest among the employees, the employer's interest in maintaining an efficient operation, and the employees' interest (or lack thereof) in representation.

In all cases, the DLR assists and encourages the parties to reach agreement concerning an appropriate unit. In FY 16, the DLR resolved 47.8% of its representation cases through voluntary agreement over the scope of the bargaining unit. When no agreement is reached, however, a DLR hearing officer conducts a hearing after which the hearing officer issues a written decision either dismissing the petition or defining the bargaining unit and directing an election. These decisions can be appealed to the CERB but there is no court appeal.

a. Representation Petitions and Elections

The DLR conducts secret ballot elections for employees to determine whether they wish to be represented by a union. Elections are conducted whenever: 1) an employer files a petition alleging that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit; 2) an employee organization files a petition accompanied by an adequate showing of interest, alleging that a substantial number of employees wish to be represented by the petitioner; or 3) an individual files a petition accompanied by an adequate showing of interest, alleging that a substantial number of employees in the bargaining unit no longer wish to be represented by the current employee organization. Depending on the size of the unit and the relative cost, the DLR conducts elections either on location or by mail ballot.

In FY16, the DLR docketed 21 representation petitions and conducted elections, involving 314 voters. A graph detailing these representation elections is available in the Case Statistic section of the Report.

b. Written Majority Authorization Petitions

On December 27, 2007 the Written Majority Authorization (“WMA” or “card check”) legislation became law. [Chapter 120 of the Acts of 2007](#). The card check law provides for an alternative to the traditional representation petition to certify an exclusive bargaining representative for unrepresented employees. The law provides that the DLR “shall certify to the parties, in writing, and the employer shall recognize as the exclusive representative for the purposes of collective bargaining of all the employees in the bargaining unit, a labor organization which has received a written majority authorization...” Therefore, a union which provides the DLR (or a designated neutral) with proof of majority support (50% plus one) of an appropriate bargaining unit will be certified by the DLR as that bargaining unit’s exclusive bargaining representative without an election. The DLR issued regulations which provide respondents with the right to file objections and challenges prior to a certification. Since the card check law requires certification within 30 days, the DLR seeks to work with the parties to expedite all WMA petitions.

In FY16, 19 written majority authorization petitions were filed. The DLR issued certifications in 17 of those petitions that were supported by 164 written majority authorization cards. A graph detailing the written majority authorization certifications issued in FY15 is available in the Statistical Reports section of the Report.

c. Unit Clarification Petitions (CAS)

A party to an existing bargaining relationship may file a petition with the DLR seeking to clarify or amend an existing bargaining unit or a DLR certification. Currently, the DLR investigates such petitions through a written investigation procedure and the CERB issues decisions resolving such cases. The information that an employer or employee organization must include in a CAS petition is specified in 456 CMR 14.04(2) and 14.03(2). An individual employee has no right to file a CAS petition. 456 CMR 14.04(2). Any CAS petition found to raise a question of representation must be dismissed and the question of representation addressed by filing a representation petition.

In FY16, the DLR received 12 CAS petitions.

4. Labor Dispute Mediation

One of the most important services offered by the DLR is labor dispute mediation in both the public and the private sectors. The DLR's mediation services can be categorized as follows:

a. Interest Mediation

Interest mediation is contract negotiation mediation. The DLR provides mediators to assist parties from the public and private sectors who are involved in such disputes. The DLR jurisdiction extends to all public sector labor contract disputes, though contract disputes involving municipal police and fire fighters are mediated through the procedures and rules adopted by the JLMC. The DLR places a high priority on interest mediation because the prevention and prompt settlement of labor contract disputes benefits the negotiating parties, and stable labor relations benefit the local community and the Commonwealth. As such, the DLR's mediation services are one of the most cost efficient and valuable forms of local aid provided by the Commonwealth. In the event that there are prohibited practice charges pending when a DLR mediator is involved in a contract dispute, the mediator attempts to resolve the charges as part of the overall settlement. The laws the DLR enforces provide a roadmap of what occurs if negotiations breakdown. In all public sector cases, except those involving police and fire, the next step is fact finding and the DLR maintains a panel of private neutrals to provide fact-finding services. In JLMC cases, the next step is arbitration and the JLMC maintains a panel of private neutrals to provide private arbitration services.

b. Mediation of Prohibited Practice Charges

The formal mediation of prohibited practices charges is one of the most important features of the reorganization statute. Prior to the reorganization, there was no regular communication between the BCA, the JLMC and the LRC. Since the reorganization, the DLR affords the parties numerous opportunities, both formal and informal, to avail themselves of the DLR's mediation services. The DLR requires mediation of all Level 1 prohibited practice hearings.

c. Grievance Mediation

The DLR provides mediation services to parties who desire to mediate grievances arising out the collective bargaining agreement. The DLR offers grievance mediation to all parties who file for grievance arbitration. In some cases, DLR mediators assist parties on an ongoing basis to settle numerous grievances.

5. Grievance Arbitration

The DLR provides grievance arbitration services that are utilized by all sectors of the Commonwealth's labor relations community. In the past fiscal year, the DLR has received grievance arbitration petitions from a variety of employer and employee representatives involving

state, county and municipal government, including police departments, fire departments, public works departments and school departments. Many of the disputes are settled before a hearing is held. If the disputes are not settled, then DLR arbitrators hold evidentiary hearings, hear arguments and accept briefs. After the close of the hearing and submission of briefs, if any, the DLR arbitrator issues an award.

6. Investigation, Prevention and Termination of Strikes

Strikes by public employees in Massachusetts are illegal. G.L. c. 150E, § 9A. When a public employer believes that a strike has occurred or is imminent, the employer may file a petition with the DLR for an investigation. The DLR immediately schedules an investigation of the allegations contained in the petition and the CERB decides whether an unlawful strike has occurred or is about to occur. If the CERB finds unlawful strike activity, the CERB issues a decision directing the striking employees to return to work. The CERB may issue additional orders designed to help the parties resolve the underlying dispute. Most strikes end after issuance of the CERB's order, but judicial enforcement of the order sometimes necessitates Superior Court litigation. Such litigation can result in court-imposed sanctions against strikers and/or their unions.

7. Litigation

As noted above, parties in prohibited practice cases issued by the DLR may appeal the final decision of the Commonwealth Employment Relations Board to the Massachusetts Appeals Court. In those cases, in addition to serving as the lower court—responsible for assembling and transmitting the record for appellate review—the CERB is the appellee and the DLR's Chief Counsel defends the CERB decision on appeal. Although a rare occurrence, M.G.L. c.150E also authorizes the DLR to seek judicial enforcement of its final orders in the Appeals Court or of its interim orders in strike cases in Superior Court. DLR attorneys represent the DLR and the CERB in all litigation activities.

8. Other Responsibilities

a. Requests for Binding Arbitration (RBA)

A party to a collective bargaining agreement that does not contain a grievance procedure culminating in final and binding arbitration may petition the DLR to order grievance arbitration. These "Requests for Binding Arbitration" (RBA) are processed quickly by the DLR to assist the parties to resolve their grievances.

b. Information on Employee Organizations

Pursuant to M.G.L. c. 150E, §§ 13 and 14, the DLR maintains files on employee organizations. Those files include: the name and address of current officers, an address where notices can be sent, date of organization, date of certification, and expiration date of signed agreements. Every employee organization is also required to file an annual report with the DLR containing: the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be

charged to the members, and the annual salaries to its officers. Although M.G.L. c. 150E authorizes the DLR to enforce these annual filings by commencing an action in the Superior Court, the DLR's current resources prohibit such action. Instead, by regulation, the DLR employs various internal case-processing incentives to ensure compliance with the filing requirements.

c. Constituent Outreach

In an effort to foster better labor relations, the DLR is always willing to make presentations before assembled labor and/or management representatives in order to speak about the latest developments at the DLR. For instance, each spring, the Director, the CERB and the DLR's Chief Counsel participate in the planning and presentation of the Annual Workshop for Public Sector Labor Relations Specialists sponsored by the Labor & Employment Law Section of the Boston Bar Association. Additionally, throughout the year, the DLR makes formal and informal presentations before various bar associations, union meetings, and employer association groups. During FY 2016 the DLR held 4 collective bargaining training sessions, attended by 121 local government managers and labor relations practitioners.

**Selected CERB Decisions
July 1, 2015 – June 30, 2016**

Unfair Labor Practices

Sections 10(a)(3) and 10(a)(4) of M.G.L. c. 150E (the Law)

Commonwealth of Massachusetts and Glennis Ogaldez, 42 MLC 72, SUP-12-2282¹ (August 24, 2015).

The CERB affirmed a Hearing Officer decision that dismissed a complaint alleging that the Commonwealth of Massachusetts, acting through the Department of Correction (DOC), violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law, by suspending Ogaldez, a correction officer at the Boston Pre-Release Center, in retaliation for assisting another correction officer at a meeting involving allegations of workplace harassment. The Hearing Officer found that Ogaldez was placed on detachment with pay due to allegations that she refused a direct order to return to her post and not because of her protected, concerted activity. On appeal, Ogaldez restated her version of the facts, arguing that they were sufficient to meet her burden of proof. The CERB disagreed, finding no basis to disturb the Hearing Officer's detailed and reasoned credibility determinations and conclusions of law.

City of Worcester and Thomas C. Duffy, 42 MLC 142, MUP-12-2131 (November 30, 2015) (Judicial appeal filed).

The City of Worcester (Employer) appealed from a Hearing Officer decision holding that it retaliated against Duffy for engaging in protected concerted activity. The CERB affirmed the Hearing Officer's decision in its entirety, concluding that the Hearing Officer had drawn reasonable inferences of unlawful motivation from the facts and applied the correct legal analysis when she concluded that, but for Duffy's filing of a grievance protesting the designation of his absence on Christmas Eve as a sick day, the Employer would not have suspended him.

Lexington School Committee and Lexington Education Association, 42 MLC 228, MUP-14-3961 (February 29, 2016).

The CERB summarily affirmed a Hearing Officer decision holding that the Lexington School Committee (School Committee) did not violate Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law when it failed to renew the appointment of a social worker represented by the Lexington Education Association (Union). On appeal, the Union argued that the Hearing Officer's finding that there was direct evidence of unlawful discrimination should have caused her to conclude that the School Committee had violated Section 10(a)(3) of the Law. The CERB rejected this argument. In cases where a charging party has established a *prima facie* case of discrimination through direct evidence, the burden of proof shifts to the employer to demonstrate that it had legitimate reasons for its actions, and that those reasons, standing alone, would have induced it to make the same decision. In this case, the Hearing Officer found that

¹ This case was consolidated for hearing with Case No. SUPL-12-2283, which is summarized separately below.

the School Committee had satisfied its burden, and the CERB found no basis to overturn this conclusion.

Boston School Committee and James W. Kelley, 42 MLC 236, MUP-11-1191, (March 18, 2016) (Judicial appeal filed).

The CERB affirmed a Hearing Officer decision dismissing a complaint alleging that the Boston School Committee failed to appoint Kelley to three temporary area manager positions in 2011 because Kelley filed a grievance. The Hearing Officer concluded that the School Committee did not violate the Law because Kelley had failed to establish a *prima facie* Section 10(a)(3) violation. The Hearing Officer alternatively held that even if Kelley had established a *prima facie* case, he nevertheless had failed to establish that, but for his protected, concerted activity, his supervisor would have considered him for the temporary appointments. On appeal, the CERB found no basis to disturb the Hearing Officer's findings that the manager's testimony that he did not promote Kelley to area manager because Kelley was "high strung" was not direct, albeit coded, evidence that he did not select Kelley due to his protected, concerted activity. The CERB rejected the remainder of Kelley's arguments that the Hearing Officer made errors of fact or law when concluding that Kelley had not established a *prima facie* case.

Section 10(a)(5)

Unilateral Change Allegations

Mandatory Subjects of Bargaining

Town of Arlington and Arlington Police Patrolmen's Association, 42 MLC 97, MUP-14-3750 (September 30, 2015) (Judicial appeal filed).

The CERB affirmed a Hearing Officer decision that concluded that the Town of Arlington (Town) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it refused to bargain with the Arlington Police Patrolmen's Association (Union) over its proposed use of an assessment center as a criteria for promotion from the bargaining unit position of patrol officer to the non-bargaining unit position of sergeant. The Hearing Officer rejected the Town's argument that using an assessment center would only minimally impact patrol officers' terms and conditions of employment, finding that a promotion to a supervisory position in another bargaining unit would directly impact employees' working conditions because of the possibility of increased pay, benefits, job satisfaction, prestige, and movement on a career ladder. The Hearing Officer also found no evidence that the use of an assessment center concerned a core governmental decision, or that bargaining was prohibited by operation of Section 7(d) of the Law. Thus, applying the well-established balancing test for determining whether a topic is a mandatory subject of bargaining, the Hearing Officer held that the criteria for a promotion from the patrol officers' bargaining unit to a position in a separate supervisory bargaining unit was a mandatory subject of bargaining.

The Town appealed, claiming that the Hearing Officer made errors of law, incorrectly distinguished NLRB decisions, and reached a result contrary to other state labor relations agencies that had considered the same issue. The CERB disagreed. When determining whether a topic is a mandatory subject of bargaining, the CERB weighs the parties' relative interests in the topic. Thus, the CERB held it was not error for the Hearing Officer to discuss a party's interest in a potential bargaining subject in terms of how important the topic is to the party. The CERB also found no error in the Hearing Officer's treatment of the non-CERB decisions that the Town cited in its post-hearing brief. The CERB therefore affirmed the Hearing Officer's decision in its entirety.

City of Newton and Newton Firefighters Association, I.A.F.F., Local 863, 42 MLC 181, MUP-12-2102 (January 29, 2016) (Judicial appeal filed).

The CERB affirmed a Hearing Officer decision holding that the City of Newton (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when the fire chief (Chief) required probationary firefighters (FFOPs) to attain Firefighter I and Firefighter II (FFI/II) certification before the end of their twelve-month probationary period without first giving notice and an opportunity to bargain over the decision and the impacts of that decision to the Newton Firefighters Association (Union). The City argued that it was not required to bargain over the decision because it was imposed as a condition of hire that was not subject to bargaining. The City also argued that bargaining over the certification requirement would directly and materially conflict with sections of the Civil Service statute that granted the fire chief the right to terminate FFOPs before the end of their twelve-month probationary period based on a subjective assessment of their character or performance. The CERB agreed with the Hearing Officer that the certification requirement was imposed as a condition of continued employment and, thus, was a mandatory subject of bargaining. The CERB also agreed with the Hearing Officer that the Civil Service provisions were not a specific and narrow statutory mandate that precluded bargaining over all of the FFOPs' terms and conditions of employment. Rather, the CERB found that, although the Civil Service statute authorized the City to determine whether to grant tenure to FFOPs based on its subjective assessment of their performance, nothing in the Civil Service statute directly and materially conflicted with the City's obligation to bargain over the FFI/II certification requirement as one means of making that determination.

City of Everett and New England Police Benevolent Association, 42 MLC 253, MUP-13-3006 (April 29, 2016) (Judicial appeal filed by City of Everett).

The City of Everett (City) and the New England Police Benevolent Association (Union) filed cross-appeals from a Hearing Officer decision holding that the City did not violate Section 10(a)(5) and, derivatively Section 10(a)(1) of the Law when it reduced the number of captains in its police department without first giving the Union notice and an opportunity to bargain to resolution or impasse because the City had the managerial right not to fill vacancies and because the Union had not established a change in practice. The Hearing Officer did, however, hold that the City failed to bargain in good faith when it indefinitely assigned a lieutenant to perform all of the duties that a captain formerly performed without first giving the Union that represented both the captains and lieutenants, notice and an opportunity to bargain over the decision and its impacts. The Hearing Officer ordered the City to restore the status quo ante but declined to order

a make-whole remedy. The CERB affirmed the decision but modified some of the Hearing Officer's reasoning.

On appeal, the Union argued that the Hearing Officer erred when she dismissed the first count, but the CERB upheld the dismissal on grounds that the Union had waived by contract its right to bargain over its decision not to fill a captain vacancy. The CERB also found no merit to the Union's appeal of the Hearing Officer's decision not to award a make-whole remedy.

The City challenged the decision on grounds that it had the right as a matter of policy, contract and statute (Civil Service Law and the Joint Labor Management Committee (JLMC) enabling statute) to assign a lieutenant to perform captain's duties. The CERB rejected these arguments, holding, among other things that, even though the right to assign may be excluded from the scope of a JLMC arbitration panel's authority under Section 4A of Chapter 1078 of the Acts of 1973, as amended, that authority is not coextensive with all the subjects made bargainable under Section 6 of the Law. The CERB rejected the City's other argument and held that, under the circumstances of this case, where a lieutenant was unilaterally assigned to perform all of a captain's duties without any increase in rank or compensation, the City violated the Law when it failed to bargain over this decision or its impacts.

City of Haverhill and Haverhill Firefighters Union, Local 1011, IAFF, 42 MLC 273, MUP-13-3066 (May 24, 2016).

The CERB affirmed a Hearing Officer decision holding that the City of Haverhill (City) violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by unilaterally changing the conditions under which the City's firefighters completed online training mandated by the Massachusetts Ethic Reform Law, M.G.L. c. 268A, §28 but modified his reasoning. Although the City had only conducted the training program once before, in 2010, the Hearing Officer found that the City had a past practice of allowing employees to complete it on or off work time and without supervision. The CERB disagreed that the way in which the training was offered in 2010 gave rise to an established past practice, but held that when the fire chief ordered bargaining unit members to complete the online training while on duty and in the presence of the training officer in 2013, he instituted a new condition of employment that affected mandatory subjects of bargaining.

The CERB agreed with the Hearing Officer's rejection of the City's various affirmative defenses, including that all matters concerning training mandated by the Ethics Reform Law were outside the scope of mandatory bargaining. The CERB found no conflict between the requirements of the Ethics Reform Law and the choice of the procedure the public employer must follow in administering it. Thus, the fact that Chapter 268A, §28 was not specifically enumerated in Section 7(d) of the Law did not preclude the requirement that the City bargain over the institution of the newly-instituted requirements for completing the Online Training Program. Because there was no dispute that the City implemented the 2013 order without first giving the Union notice and an opportunity to bargain, the CERB held that the Hearing Officer properly held that the City was obligated to bargain over the institution of the newly-instituted requirements.

City of Lynn and AFSCME, Local 1736, Council 93, AFL-CIO, 42 MLC 336, MUP-11-1318 (June 27, 2016).

In a case involving former school department custodial employees who were transferred to the City of Lynn's (City) inspectional services department via home rule amendment, the CERB affirmed a Hearing Officer decision holding that the City violated its duty to bargain in good faith when it unilaterally changed the vacation retirement benefit past practice in effect when the employees were employed by the school department. The CERB relied on longstanding precedent grounded in Section 1 of the Law holding that a municipality and a school committee jointly share responsibility when bargaining obligations are unfulfilled. The CERB rejected the City's argument on appeal that the Union had waived by contract its right to bargain over the change in past practice by rejecting the City's proposal to provide a list of all past practices and by agreeing to a zipper clause. The facts showed that the City and the Union had not addressed the vacation retirement benefit during bargaining and their final agreement was silent on this issue. Thus, notwithstanding a zipper clause, the statutory duty to bargain over mandatory subjects of bargaining continues during the term of the contract as to all subjects that have not been resolved during negotiations.

Impact Bargaining/Remedy

City of Somerville and Somerville Police Employees Association, 42 MLC 170, MUP-13-2977 (December 30, 2015).

The CERB affirmed a Hearing Officer decision holding that the City of Somerville (City) refused to bargain in good faith by unilaterally implementing a decision to assign bargaining unit Station Officers to perform the duties performed by the non-bargaining unit position of Console Operator without first giving the Somerville Police Employees Association (Union) notice and an opportunity to bargain to impasse over the impacts of that decision. The Hearing Officer ordered the City to post a notice to that effect (Notice). The City appealed, arguing that, because it never refused to engage in impact bargaining, the Notice was "false." The City also argued that because the Hearing Officer found that its assignment was subject to impact bargaining only, she improperly ordered the City to restore the *status quo ante*.

The CERB rejected both arguments. The City pointed to no evidence in the record that it offered to negotiate over the impacts of this unilateral change *prior to* the change being implemented. Accordingly, absent exigent circumstances not found or argued, its duty to notify the Union of a potential change before it is implemented was not satisfied by presenting the change as a *fait accompli* and then offering to bargain.

As to remedy, the CERB disagreed with the City that the Hearing Officer's Order required the City to restore the status quo ante. Further, because the impacts on bargaining unit members' workload and job duties were an inevitable consequence of the City's core managerial decision, a prospective order to bargain over these impacts was an appropriate remedy.

Town of Winchester and SEIU, Local 888, 42 MLC 332, MUP-13-3289 (June 23, 2016).

The Hearing Officer dismissed a complaint alleging that the Town of Winchester unlawfully failed to engage in impact bargaining before deciding to re-hire a recent retiree on a part-time temporary basis. The Union appealed. On review, the CERB agreed with the Hearing Officer that the Union had failed to meet its burden of proving that the hiring decision impacted bargaining unit members' terms and conditions of employment. The CERB rejected the Union's argument that the decision impacted bargaining unit members' contractual bidding and posting rights because the issue of whether the Town had violated its contractual obligations in this regard had not been pleaded, litigated or decided.

Transfer of Bargaining Unit Work/Shared Work

Commonwealth of Massachusetts, Department of Correction and Massachusetts Correction Officers Federated Union, 42 MLC 109, SUP-13-2604 (October 19, 2015).

The CERB affirmed a Hearing Officer decision holding that the Department of Correction (DOC) did not unlawfully transfer the duties of the Assistant Assignment Officer (AAO) outside of the bargaining unit represented by MCOFU without first giving MCOFU prior notice and an opportunity to bargain to resolution or impasse. The facts showed that the DOC operated eighteen penal facilities throughout the Commonwealth. The AAO's duties were performed by both bargaining unit and non-bargaining unit members at a number of these facilities, included the one where the alleged transfer occurred. The CERB agreed with the Hearing Officer that the work was shared work but that MCOFU failed to demonstrate that the Employer's conduct resulted in a calculated displacement of shared work that required bargaining.

Duty to Support

Franklin Technical Regional School Committee and Franklin County Technical Teachers Association, 42 MLC 278, MUP-14-3867 (May 31, 2016).

The CERB affirmed a Hearing Officer decision holding that the School Committee had failed to offer unconditional support of a grievance settlement agreement in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. The violation occurred when, following a grievance settlement that the school superintendent entered into with the Franklin County Technical Teachers Association to recommend funding of an additional teacher to the School Committee's finance subcommittee, the superintendent knowingly and immediately allowed the school principal to make a non-funding recommendation to the same subcommittee. The CERB upheld the Hearing Officer's order for the School Committee to resubmit the funding request, but clarified it to differentiate between the School Committee's role as the statutory employer, and its role as the funding body for the second position.

Section 10(b)(1)

Breach of the Duty of Fair Representation

Commonwealth of Massachusetts and Glennis Ogaldez, 42 MLC 72, SUPL-12-2283 (August 24, 2015) (Judicial appeal filed).

The CERB affirmed a Hearing Officer decision holding that the Union, through statements made by a Union steward to Ogaldez, had chilled and coerced her in the exercise of her rights under Section 2 of the Law. The Union raised a number of arguments on appeal, including that Ogaldez was not engaged in protected, concerted activity when she attended a meeting with her steward and another bargaining unit member, who was then serving as Ogaldez's officer-in-charge. The Hearing Officer held that this was tantamount to a pre-grievance hearing and the CERB agreed. The CERB also affirmed the Hearing Officer's findings and legal conclusions that the steward's statement to Ogaldez that, "We're tired of you girl and your whining" and "[W]e could always send you back to Shattuck where you came from" were threatening and demeaning and would tend to chill and coerce employees in the exercise of their protected rights.

Procedural Issues – Unpled Allegations; Timeliness

Commonwealth of Massachusetts and AFSCME Council 93, 42 MLC 97, SUP-10-5606 (July 31 2015).

The charge and complaint in this matter alleged that the Commonwealth of Massachusetts (Employer) laid off an employee in violation of Sections 10(a)(3) and (4) of the Law. The Hearing Officer dismissed the layoff allegations but found that the Employer had violated the Law when it issued three reprimands in 2009 and 2010 in retaliation for the employee participating in DLR proceedings and engaging in protected, concerted activities. None of the reprimands had been alleged as separate violations in the prohibited practice charge or complaint. Two of the reprimands occurred more than six months before the charge was filed. The Employer appealed, arguing, among other things, that the reprimands had not been fully litigated and that two of the reprimands were untimely. In response, AFSCME Council 93 (Union) argued that the matters had been fully litigated and that the Employer had waived its right to raise timeliness as a defense by not raising it during the hearing. The CERB decided that, because the Employer did not have notice until the decision issued that the untimely reprimands were going to be treated as distinct violations, the Employer had not waived its right to raise timeliness as an affirmative defense. The CERB further found that the third reprimand had not been fully litigated because: 1) it was not alleged in the complaint; 2) the parties' post-hearing briefs did not establish that they were on notice that this reprimand would be treated as a separate violation; and 3) the Hearing Officer's statements and evidentiary rulings left questions concerning the scope of the hearing. The CERB therefore reversed the Hearing Officer's decision on procedural grounds.

Representation, Written Majority Authorization and Unit Clarification Matters²

Appropriate Bargaining Unit

On-call employees

Town of Monson and Monson Call Fire Organization, 42 MLC 75, MCR-14-3997 (August 28, 2015).

The issue in this case was which, if any, of the Town of Monson's Fire Department call personnel were eligible to vote in a representation election. The Monson Call Fire Organization (Union) filed a petition seeking to represent a unit comprised of four groups of call employees: call firefighters, call firefighter/EMTs, call EMTs and call non-firefighter/non-EMTs. In addition to responding to alarms, the Fire Department had one per-diem eight-hour daily weekday shift and two weekend shifts (Call Shifts) that were staffed exclusively by call firefighter/EMTs or call EMTs based on their personal availability. Because of these separate Call Shifts, the CERB declined to analyze whether these employees had sufficient continuity and regularity of employment so as to entitle them to collective bargaining rights based solely on their alarm response rate. Rather, the CERB ruled that any call employee who, in the fiscal year preceding its decision, had been compensated at an hourly rate for no less than 33%, of the scheduled number of hours a full-time firefighter worked each year, (in this case, 33% of 2600, or 858 hours) had sufficient continuity and regularity of employment and, thus was eligible to vote in the election.

Statutory Employer

Committee for Public Counsel Services and SEIU, Local 888, 42 MLC 87, WMAP-15-4647 (August 31, 2015).

The CERB dismissed a petition for written majority authorization filed under M.G.L. c. 150A (the Law) seeking to form a bargaining unit of lawyers and administrative staff employed by the Committee for Public Counsel Services (CPCS). Although it was undisputed that the petitioned-for employees were statutory employees, the CERB concluded that CPCS was a state agency that was excluded from the definition of employer under Section 2 of the Law. Consequently, absent legislation indicating that CPCS was a Chapter 150A employer, the CERB ruled that CPCS employees could not be granted bargaining rights under Chapter 150A.

² All representation and CAS matters were decided by the CERB in the first instance.

Neutral Verification Process/Managerial Employees

Framingham Housing Authority and Massachusetts Public Employee Council, 42 MLC 340, WMAM-16-5045 (June 28, 2016).

The CERB reinvestigated a certification of written majority authorization (WMA) that the DLR issued in January 2016 due to the Neutral's failure to investigate and resolve outcome-determinative challenges regarding three titles the Employer claimed were managerial or casual and the omission of standard DLR exclusionary language. After examining the duties of the challenged employees, the CERB concluded that the challenged employees were neither managerial nor casual and thus concluded that a majority of employees in an appropriate bargaining unit had signed valid written majority authorizations. The CERB thus left the January 2016 certification intact but ordered that an amended certification should issue that includes the DLR's standard exclusionary language.

Unit Clarification Petitions

City of Boston, Boston Public Library and Boston Public Library Professional Staff Association and AFSCME, Local 526, Council 93, AFL-CIO, 42 MLC 40, CAS-14-3412 (July 21, 2015).

The issue was whether the Training Coordinator title at the City of Boston Public Library should be accreted into the Boston Public Library Professional Staff Association's (PSA) bargaining unit or remain in the bargaining unit represented by AFSCME, Local 1526, Council 93, AFL-CIO (AFSCME). After investigation, the CERB found that the incumbent was responsible for developing staff training programs with a primary, but not exclusive, focus on the database used by library employees to inventory and track information about the Library's holdings and patron usage. The CERB found that the Training Coordinator shared a community of interest with both bargaining units based on work contact and job duties, particularly technology training duties. The CERB concluded however, that, based on the fact that the majority of PSA bargaining unit members were professional employees within the meaning of Section 1 of the Law, the Training Coordinator shared a greater community of interest with AFSCME's unit because it was a non-professional title that required only a high school degree.

City of Boston, Boston Public Library and AFSCME, Local 1526, Council 93, AFL-CIO and Boston Public Library Professional Staff Association, 42 MLC 326, CAS-14-4040 (June 20, 2016).

AFSCME filed a petition seeking to accrete the newly-created title of Cash Management Auditor (CMA) into its non-professional bargaining unit at the Boston Public Library. The Library had initially placed the CMA into the PSA's bargaining unit because the position required a bachelor's degree in a business discipline, with a graduate degree in a related field preferred. The CERB dismissed the petition. It held that, even though the CMA shared a community of interest with both the PSA's and AFSCME's unit in terms of the cash collection and reconciliation duties, the CMA shared a greater community of interest with the PSA's unit in terms of level of education, serving as back-up to two Assistant Principal Accountants in the

Accounting Department and overall responsibility for reconciling Library-wide, six-figure cash and credit transactions.

Miscellaneous Rulings

Town of Hull and Hull School Committee and Hull Teachers Association, 42 MLC 177, MUP-10-5951-5954 (January 15, 2016) (Ruling on Request for Reconsideration Pending Judicial Appeal).

The issue before the CERB was whether to reconsider its August 15, 2012 Decision and Order in Town of Hull/Hull School Committee, 39 MLC 27 (2012) (Hull). In Hull, the CERB, relying on City of Somerville, 38 MLC 91 (2011) (Somerville), held that M.G.L. c 32B, §9E did not preclude a public employer from bargaining with a union over its percentage contributions to the future retiree health insurance benefits of current employees. The Town of Hull and Hull School Committee filed notices of judicial appeal. While the appeals were pending, the SJC issued City of Somerville & another v. CERB, 470 Mass. 563 (City of Somerville), which reversed the CERB's Somerville decision. Shortly thereafter, the School Committee asked the CERB to reconsider its Hull decision in light of City of Somerville. The CERB sought the parties' positions on the request. All parties agreed that City of Somerville controlled the outcome of the Hull appeals and rendered the CERB's order therein unenforceable. Under those limited circumstances, and in the interests of promoting the orderly administration of labor relations and conserving judicial and administrative resources, the CERB vacated its August 15, 2012 Order.

Selected Litigation
July 1, 2015 – June 30, 2016

SUPERIOR COURT LITIGATION

Methuen Department of Public Works Employees Association and Laborers International Union of North America, Local 175 v. Commonwealth of Massachusetts Department of Labor Relations, Civil Action No. Civil Action No. 2015-2637D. The Union's Motion for Preliminary Injunction was denied and the matter was later dismissed pursuant to a Stipulation of Dismissal on December 15, 2015.

APPEAL MATTERS DISPOSED BY APPEALS COURT:

City of Boston, Appellant v. Commonwealth Employment Relations Board, Appellee, 87 Mass. App. Ct. 1137 (7/28/2015)

Appeal from a Commonwealth Employment Relations Board decision affirming a hearing officer's finding that the City of Boston violated §10(a) (5) and, derivatively, §10(a) (1) of G.L. c. 150E by repudiating a settlement agreement. The Board rejected the City's arguments as improperly raised for the first time on appeal. In a summary decision pursuant to M.R.A.P. 1.28, the Court affirmed the Board's decision. Also rejected were arguments made to the Court that were not made to the Board for being raised for the first time on appeal.

AFSCME Council 93, Appellant, Justin Chase, Appellant v. Commonwealth Employment Relations Board, Appellee, 88 Mass. App. Ct. 1103 (8/28/2015)

Appeal from a Board's decision which, in part, affirmed a hearing officer decision and, in part, reversed a hearing officer decision that the union breached its duty of fair representation in violation of G.L. c. 150E, § 10(b)(1) alleging that the union failed to file grievance when Appellant was terminated/laid off. In a summary decision pursuant to M.R.A.P. 1.28, the Court affirmed the Board on 8/28/2015. Appellant filed an application for further appellate review (FAR) in the SJC. The Board filed an opposition. The Court denied the petition.

Justin B. Chase, Appellant v. Commonwealth Employment Relations Board, Appellee Appeals Court No. 2016-J-0203. After the Board issued a clarification of its order, Appellant filed a notice of appeal with the Department of Labor Relations. Appellant filed a motion to compel the Department to assemble the record which the Department opposed. On June 2, 2016 the Single Justice allowed the motion to compel assembly of the record. Motion for cost was denied.

National Association of Government Employees, Appellant v. Commonwealth Employment Relations Board, Appellee, 45 N.E. 3rd 611 (Table) (2/18/2016)

Appeal from a Commonwealth Employment Relations Board decision affirming a hearing officer decision that the City of Worcester did not violate Section 10(a)(5) and, derivatively, Section 10(a)(1) of G.L. c. 150E by refusing to grant the union president paid time off to conduct certain union business. In summary a decision pursuant to M.R.A.P. 1.28, the Court affirmed the Board finding that there was substantial evidence to support its finding that there was no past practice of the City of Worcester allowing the union president to take paid leave for certain specific types of union related activity. The Court also rejected arguments made to the Court that were not made to the Board for being raised for the first time on appeal.

Town of Plymouth, Appellant v. Commonwealth Employment Relations Board, Appellee, 89 Mass. App. Ct. 1111 (3/9/2016)

Appeal from a Commonwealth Employment Relations Board decision affirming a hearing officer decision that the Town violated its bargaining obligation by implementing a cell phone policy without bargaining with the union. The policy, in part, prohibited use and possession of cameras in workplace, limited use of Town phones for personal use, limited the number of personal calls while working and prohibited the use of cell either personal or Town cell phones while operating a vehicle or equipment. In a summary a decision pursuant to M.R.A.P. 1.28, the Court affirmed the Board.

Robert Gagne, Appellant v. Commonwealth Employment Relations Board, Appellee, 89 Mass. App. Ct. (4/22/2016)

Appeal from a Commonwealth Employment Relations Board decision affirming an investigator's dismissal of a charge for lack of probable cause. In summary a decision pursuant to M.R.A.P. 1.28, the Court affirmed the Board's decision that the Appellant had failed to sustain his burden of showing probable cause that the union breached its duty of fair representation.

Town of Plymouth, Appellant v. Commonwealth Employment Relations Board, Appellee 2015-P-1051 7/22/16 Dismissed by the Court pursuant to a stipulation of dismissal after briefs and arguments.

Town of Plymouth, Appellant v. Commonwealth Employment Relations Board, Appellee 2015P-1237 7/27/16 Dismissed by the Court pursuant to a stipulation of dismissal after briefs and arguments.

CASES DISPOSED BY DLR AFTER RECORD ASSEMBLY FILED WITH APPEALS COURT, OR WITHDRAWAL-SETTLEMENT-MEDIATION:

1. MUPL-12-2147 MUPL-12-2148 AFSCME and COBRA, Withdrawn/Settled 8/14/15.
2. MUPL 11-1150 Steelworkers and Dodds, Dismissed by DLR after record assembly filed with Court for failure to prosecute 9/8/15.
3. MUP-15-4376 Watertown and IAFF Local 1347, Withdrawn/Settled 10/16/15.
4. MUP-13-2683 Chelsea Firefighters and City of Chelsea, Withdrawn/Settled 11/3/15.
5. SUP-11-1350 Commonwealth of Massachusetts and SPAM, Withdrawn/Settled 11/3/15.
6. SUP-12-2192 Board of Higher Education and Jon Bryan, Withdrawn/Settled 1/27/16.
7. MUPL-12-2214 COBRA and AFSCME, Withdrawn/Settled 3/9/16.
8. MUP 10-5951, 10-5952, 10-5953, 10-5954 Hull School Committee and Hull School Teachers et al, Withdrawn/Settled 5/4/16.

DEPARTMENT OF LABOR RELATIONS
FY2016 CASES RECEIVED
 JULY 1, 2015 – JUNE 30, 2016
 MONTHLY BY CASE TYPE WITH TOTALS AND AVERAGES

CASES OPENED															
CASE TYPE	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG	% YTD
Unfair Labor Practice	40	41	28	32	28	42	26	25	36	23	28	46	395	32.92	61.53%
Representation Cases	3	3	5	2	4	4	7	4	2	2	2	2	40	3.33	6.23%
Unit Clarification (CAS)	1	1	1	1			4			2	2		12	1.09	1.87%
Other (SI, AO, RBA)												3	3	0.27	0.47%
Grievance Arbitration	6	3	3	10	7	1	2	2	7	5	1	2	49	4.08	7.63%
Grievance Mediation	1					1	1					1	4	0.36	0.62%
Contract Mediation	10	5	6	10	5	6	4	2	12	10	6	12	88	7.33	13.71%
JLMC	7	6		3	5	3	4	2	5		7	9	51	4.64	7.94%
TOTAL	68	59	43	58	49	57	48	35	62	42	46	75	642	53.50	100.00%

DEPARTMENT OF LABOR RELATIONS
FY2016 CASES CLOSED
 JULY 1, 2015 – JUNE 30, 2016
 MONTHLY BY CASE TYPE WITH TOTALS AND AVERAGES

CASES CLOSED															
CASE TYPE	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG	% YTD
Unfair Labor Practice	39	47	74	52	46	38	36	35	47	43	46	39	542	45.17	65.54%
Representation Cases	7	2	6	5	2	5	4	1	6	2	6	1	47	3.92	5.68%
Unit Clarification (CAS)	1		1		3	3						4	12	1.09	1.45%
Other (SI, AO, RBA)				4					2			1	7	0.70	0.85%
Grievance Arbitration	8	1	4		5	9	6	10	4	7	5	5	64	5.33	7.74%
Grievance Mediation			1	3					1	5		1	11	1.10	1.33%
Contract Mediation	1	6	13	2	2	10	2	10	11	1	15	16	89	7.42	10.76%
JLMC	1	3	1		3	8	7	4	3	11	12	2	55	5.00	6.65%
TOTAL	57	59	100	66	61	73	55	60	74	69	84	69	827	68.92	100.00%

DEPARTMENT OF LABOR RELATIONS
FY2016 CASE PROCESSING DATA
 JULY 1, 2015 – JUNE 30, 2016
 MONTHLY WITH TOTALS AND AVERAGES

PROBABLE CAUSE	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Investigations Held	18	16	20	9	16	12	12	12	19	10	13	10	167	13.92
Dismissals Issued	5	6	2	6	5	6	7	6	1	10	4	3	61	5.08
Complaints Issued	14	9	15	6	8	6	4	8	8	6	8	8	100	8.33
Total Probable Cause	19	15	17	12	13	12	11	14	9	16	12	11	161	13.42
Avg. # Wks Invest. To PC	3.12	4.10	1.86	5.79	5.51	4.31	3.25	2.60	4.00	4.74	3.18	2.72	45.18	3.77
HEARINGS	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Pre-Hearing Conferences	1	7	13	3	4	9	17	4	4	4	5	2	73	6.08
Hearings Held	1		4	3	7		3	5	1	2	3	3	32	2.67
Misc. Rulings/R-Case Dec				1			1						2	0.18
HO Decisions Issued	4	2		3	1			3		1	2	5	21	1.75
Avg. # Wks Ripe to HO De	37.00	25.10		13.70	4.30			38.60		23.00	14.90	18.50	175.10	14.59

DEPARTMENT OF LABOR RELATIONS
FY2016 CASE PROCESSING DATA
 JULY 1, 2015 – JUNE 30, 2016
 MONTHLY WITH TOTALS AND AVERAGES

CERB	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Admin. Appeals Filed - PC	5	4		2	2		7		3	2	1	2	28	2.33
Admin. Appeals Filed - HO	1			3	2				1		1	2	10	0.83
PC Decision Issued & Rev	2	3	2	4	2	1	4	1	1	3	1		24	2.18
HO Appeal Decision Issue	1	2	1	1	1	1	1	1	1	1	2	2	15	1.25
CERB Dec. 1st Inst. RCas	1	2							1				4	0.40
Misc. Rulings									1	1		1	3	0.33
Avg. # Wks to Issue PC D	12.21	10.81	20.42	15.11	20.72	17.28	21.28	9.00	21.28	7.85	6.50		162.46	13.54
Avg. # Wks Ripe to HO Ap	55.43	10.42	20.71	15.00	46.00	23.14	33.00	20.85	33.00	43.00	37.36	47.28	385.19	32.10
MEDIATION & ARBITRATION	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Arbitrations Held				4	1	2	1	4	2	3	1	1	19	1.58
Arbitration Decision Issued	3	1	1	1	1	3	2	2	2	1	1	2	20	1.67
Grievance Mediations Held	1				1	1	1			1			5	0.45
Contract Mediations Held	20	9	23	23	31	15	11	20	23	19	28	21	243	20.25
ULP Mediations Held	8	30	12	7	11	15	16	11	12	5	14	17	158	13.17
Avg. # Wks Initial Contract	4.28	46.52	39.53	13.00		23.06	47.00	27.80	25.94	12.50	16.92	19.01	275.56	22.96
Avg. # Wks Ripe to Arbitra	7.40	6.10	11.00	14.40	12.28	4.09	15.42	4.68	16.42	11.42	3.00	9.94	116.15	9.68

DEPARTMENT OF LABOR RELATIONS
FY2016 CASE PROCESSING DATA
 JULY 1, 2015 – JUNE 30, 2016
 MONTHLY WITH TOTALS AND AVERAGES

JLMC	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Contract Mediations Held	23	14	30	11	7	3	11	8	14	13	9	7	150	12.50
3A Hearings Held		1	2	2	2	1	2				1		11	1.00
Tentative Agreements Ratified			2	1	2	4	4	2	2	5	1	3	26	2.17
Arbitration Awards Issued	1		1	2	1	2	1		1				9	0.82
Avg. # Wks Initial Investigaiton/Mediation			11.43	12.00	9.10	19.00	39.96	24.34	65.87	16.11	83.28	61.43	342.52	28.54
Avg. # Wks Initial Investigaiton/Mediation	109.00		100.71	96.07	63.57	94.60	80.71		92.00				636.66	63.67
JUDICIAL APPEALS	JUL.	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUN.	TOTAL	AVG
Probable Cause Appeals Filed	1			1			2						4	0.33
CERB-HO Decision Appeals Filed			1	1		1		1		1	2		7	0.58
Probable Cause Appeals Withdrawn		1		1	1				1				4	0.36
CERB-HO Decision Appeals Withdrawn					1								1	0.10
Records Assembled	1	2			1	1	1		1		1		8	0.67
Avg. # Wks Ripe to Rec. Assembled	149.86	71.21			119.57	76.14	4.00		130.00		88.71		639.49	53.29

FY 2016 REPRESENTATION ELECTIONS*
(EXCLUSIVE OF WRITTEN MAJORITY AUTHORIZATION PETITIONS)

Unit Size	Municipal		State		Private		Total	
	No. of Elections	No. of Voters	No. of Elections	No. of Voters	No. of Elections	No. of Voters	No. of Elections	No. of Voters
<10	4	22					4	22
10-24	2	34	1	13			2	47
25-49	4	158	1	26			1	61
50-74	1	61					1	61
75-99								
100-149								
150-199								
200-499								
Above 500								
Total	11	275	2	39			13	314

* NOTE: In FY 2016, parties filed 40 Representation petitions. The above chart contains information only on elections conducted by the DLR in FY2016.

FY 2016
WRITTEN MAJORITY AUTHORIZATION
CERTIFICATIONS*

Size of Unit	Municipal		State		Private		Total	
	CERTS	CARDS	CERTS	CARDS	CERTS	CARDS	CERTS	CARDS
Under 10	11	54					11	54
10-24	5	78					5	78
25-49	1	32					1	32
50-74								
75-99								
100-149								
150-199								
200-499								
Above 500								
Total	17	164					17	164

* Note: The number of certifications represents the number of petitions filed that resulted in the Department issuance of a certification. In FY 2016 a total of 19 written majority authorization petitions were filed. The DLR did not issue a certification in 2 cases either because the DLR dismissed the petition or the petitioner withdrew the petition.

DEPARTMENT OF LABOR RELATIONS STAFF LIST

EMPLOYEES, FUNCTIONAL TITLES AND PAYROLL TITLES

Last Name	First Name	Functional Title	Payroll Title	FTE
Atwater	Susan	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Bevilacqua	Heather	Mediation Manager	Program Manager VII	1.00
Bonner	Kerry	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Davis	Kendra	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Eustace	Kimberly	Program Coordinator	Program Coordinator III	0.92
Evans	Will	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Gabriel	Jane	Chief Counsel	Program Manager VIII	1.00
Goodberlet	Kathleen	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Gookin	Carol	Mediator	Program Coordinator III	1.00
Griffin	Joseph	Hearing Officer/Arbitrator/Mediator	Counsel II	0.50
Hanson	John	Chair, JLMC	Per Diem	
Harrington	Brian	Hearing Officer/Arbitrator/Mediator	Program Manager V	1.00
Hatfield	Timothy	Mediator/Arbitrator	Program Manager VII	1.00
Hubley	Joseph	JLMC Staff Rep./Labor	Program Coordinator III	0.50
Kelley	Gwenn	Collective Barg. Case Processing Spec.	Collective Barg. Elect. Spec. II	1.00
Lev	Katherine	Board Member, CERB	Per Diem	
Murray	Kevin	Hearing Officer/Arbitrator/Mediator	Counsel II	0.50
Neumeier	Elizabeth	Board Member, CERB	Per Diem	
Siciliano	Shirley	Election Specialist	Collective Barg. Elect. Spec. II	0.40
Srednicki	Edward	Executive Secretary	Administrator VII	1.00
Sullivan	Margaret	Hearing Officer/Arbitrator/Mediator	Counsel II	1.00
Sunkenberg	James	Investigative Hearing Officer	Counsel I	1.00
Wittner	Marjorie	Chair, CERB	Administrator IX	1.00

DLR ADVISORY COUNCIL

There shall be an advisory council to advise the DLR concerning policies, practices, and specific actions that the DLR might implement to better discharge its labor relations duties. [Chapter 145 of the Acts of 2007](#).

DLR Advisory Council Membership

Labor

Kathrine Shea, Esq.	Pyle, Rome, Ehrenberg, PC
Amy Davidson, Esq., Chair	Sandulli, Grace PC
Ira Sills, Esq.	Segal, Roitman LLP
Jennifer Springer, Esq.	SEIU, Local 888
Ira Fader, Esq.	Massachusetts Teachers Association

Management

Nicholas Anastasopoulos, Esq.	Mirick, O'Connell, DeMallie & Lougee, LLP
Mark D'Angelo	Director - Commonwealth of Massachusetts Office of Employee Relations
Jim Hardy	Field Director – Policy Massachusetts Association of School Committees
Brian Magner, Esq	Deutsch Williams Brooks DeRensis & Holland, P.C.

Neutrals

Gary Altman, Esq.	Arbitrator
John Cochran, Esq.	Arbitrator
Sarah Garraty, Esq.	Arbitrator

DEPARTMENT OF LABOR RELATIONS

FY16 BUDGET

FY 2016 APPROPRIATION SUMMARY

	7003-0900	7003-0901	Total
Governor's Budget Recommendation - House 1	\$2,150,000	\$100,000	\$2,250,000
General Appropriation Act	\$2,150,000	\$100,000	\$2,250,000
Supplemental Appropriation/Retain Revenue Deficiency	\$150,000	-\$61,491	\$88,509
Total Available	\$2,092,	\$91,250	\$2,338,509

FY 2016 EXPENDITURES ALL APPROPRIATIONS

Total Available		\$2,338,509
AA	Employee Compensation	\$2,025,490
BB	Employee Travel Reimbursement	\$26,544
DD	Medicare, Unemployment, Univ. Health, Workers Comp.	\$33,421
EE	Administrative Expenses	\$34,270
FF	Facility Operational Expenses	\$126,136
GG	Space Rental	\$7,774
HH	Consultant Service Contracts	\$0
JJ	Programmatic Operational Services	\$10,000
KK	Equipment Purchases	\$0
LL	Equip. Lease, Maintenance, Repair Expenses	\$4,742
NN	Infrastructure	0
UU	Information Technology	\$65,858
Total Expended		\$2,334,235
Reversion		\$4,274